

(b) Areas under investigation which contain information classified by any agency of the United States Government in the interest of national security will be investigated only by NIOSH officers who have obtained the proper security clearance and authorization.

[45 FR 2653, Jan. 14, 1980]

§ 85.6 Advance notice of visits.

(a) Advance notice of visits to the place of employment may be given to expedite a thorough and effective investigation. Advance notice will not be given when, in the judgment of the NIOSH officer, giving such notice would adversely affect the validity and effectiveness of the investigation.

(b) Where a request in accordance with this part has been made by an authorized representative of employees, advance notice in accordance with paragraph (a) of this section will be given by NIOSH to the requester, the representative of the employees for purposes of collective bargaining if such representative is other than the requester, and to the employer.

(c) Where a request in accordance with this part has been made by any employer, advance notice will be given by NIOSH to the employer. Upon the request of the employer, NIOSH will inform the authorized representative of employees of the visit: *Provided*, The employer furnishes NIOSH in writing with the identity of such representative and with such information as is necessary to enable NIOSH promptly to inform such representative of the visit.

§ 85.7 Conduct of investigations.

(a) Prior to beginning an investigation, NIOSH officers shall present their credentials to the owner, operator, or agent in charge at the place of employment, explain the nature, purpose, and scope of the investigation and the records specified in § 85.5 which they wish to review. Where the investigation is the result of a request submitted by an authorized representative of employees, a copy of the request shall be provided to the employer, except where the requester or any person authorizing the requester pursuant to § 85.3-1(e)(2) has indicated that NIOSH not reveal his name to the employer, in

which case a summary of the basis for the request shall be provided to the employer.

(b) At the commencement of an investigation, the employer should precisely identify information which can be obtained in the workplace or workplaces to be inspected as trade secrets. If the NIOSH officer has no clear reason to question such identification, such information shall not be disclosed except in accordance with the provisions of section 20(a)(6) and section 15 of the OSH Act or section 501(a)(11) of the FMSH Act. However, if NIOSH at any time questions such identification by an employer, not less than 15 days' notice to an employer shall be given of the intention to remove the trade secret designation from such information. The employer may within that period submit a request to the Director, NIOSH, to reconsider this intention and may provide additional information in support of the trade secret designation. The Director, NIOSH, shall notify the employer in writing of the decision which will become effective no sooner than 15 days after the date of such notice.

(c) NIOSH officers are authorized to collect environmental samples and samples of substances or measurements of physical agents (including measurement of employee exposure by the attachment of personal sampling devices to employees with their consent), to take or obtain photographs related to the purpose of the investigation, employ other reasonable investigative techniques, including medical examinations of employees with the consent of such employees, and to question privately any employer, owner, operator, agent, or employee. The employer shall have the opportunity to review photographs taken or obtained for the purpose of identifying those which contain or might reveal a trade secret.

(d) NIOSH officers shall comply with all safety and health rules and practices at the place of employment being investigated, and they shall provide and use appropriate protective clothing and equipment. In situations requiring specialized or unique types of protective equipment, such equipment shall be furnished by the employer.

§ 85.8

(e) The conduct of investigations shall be such as to preclude unreasonable disruption of the operations of the employer's establishment.

[37 FR 23640, Nov. 7, 1972, as amended at 45 FR 2653, Jan. 14, 1980; 49 FR 4739, Feb. 8, 1984]

§ 85.8 Provision of suitable space for employee interviews and examinations; identification of employees.

An employer shall, in request of the NIOSH officer, provide suitable space, if such space is reasonably available, to NIOSH to conduct private interviews with, and examinations of, employees. NIOSH officers shall consult with the employer as to the time and place of the medical examination and shall schedule such examinations so as to avoid undue disruption of the operations of the employer's establishment. NIOSH shall conduct, and assume the medical costs of, examinations conducted under this part.

§ 85.9 Representatives of employers and employees; employee requests.

(a) NIOSH officers shall be in charge of investigations. Where the request for a health hazard evaluation has been made by an authorized representative of employees, a representative of the employer and a representative authorized by his employees who is an employee of the employer shall be given an opportunity to accompany the NIOSH officer during the initial physical inspection of any workplace for the purpose of aiding the investigation by identifying the suspected hazard. The NIOSH officer may permit additional employer representatives and such additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the investigation. However, if in the judgment of the NIOSH officer, good cause has been shown why accompaniment by a third party who is not an employee of the employer is reasonably necessary to the conduct of an effective and thorough investigation of the workplace, such third party may accompany the NIOSH officer during the inspection: *Provided, however,* That access by such persons to areas described in paragraph (d) of this section shall be in accordance with the requirements of

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such provision, and access to areas described in paragraph (e) of this section shall be with the consent of the employer. A different employer and employee representative may accompany the officer during each different phase of an inspection if this will not interfere with the conduct of the investigation.

(b) NIOSH officers are authorized to resolve all disputes as to who is the representative authorized by the employer and employees for the purpose of this section. If there is no authorized representative of employees, or if the NIOSH officer is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters directly related to the health hazard evaluation.

(c) NIOSH officers are authorized to deny the right of accompaniment under this section to any person whose conduct interferes with a fair and orderly physical inspection.

(d) With regard to information classified by an agency of the U.S. Government in the interest of national security, only persons authorized to have access to such information may accompany an officer in areas containing such information.

(e) Upon request of an employer, any representative authorized under this § 85.9 by employees in any area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area.

§ 85.10 Imminent dangers.

Whenever, during the course of, or as a result of, an investigation under this part, the NIOSH officer believes that there is a reasonable basis for an allegation of an imminent danger, NIOSH will immediately advise the employer and those employees who appear to be in immediate danger of such allegation and will inform appropriate representatives of the Department of Labor or the State agency designated under section 18(b) of the OSH Act.

[37 FR 23640, Nov. 7, 1972, as amended at 45 FR 2653, Jan. 14, 1980]